

Michigan Creditors Bar Association

February 18, 2009

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State Court Administrative Office

Attn: Amy Byrd
PO Box 30048
Lansing, MI 48909

Courtformsinfo@courts.mi.gov

RE: Approved Court Forms

Dear Ms. Byrd,

Below are the suggestions and comments for the Michigan Creditors Bar Association:

1. Under the section titled "joint session" regarding "email addresses" suggested by the Michigan Court Officers: MCBA supports the proposition that a field for the email address be included in the case title on forms that require proof of service. We would like to see the Michigan courts move closer to eventual e-filing and this is a good step. Any information that would promote and facilitate communication between Court Officers and attorneys is beneficial to all the parties.
2. In response to MC02 "Appearance": MCBA supports the suggestion for email addresses to be included on appearances by attorneys.
3. In response to MC13: MCBA's position is that attorneys should be signing on behalf of corporations. Attorneys are required under MCR 2.114 to reasonably investigate the facts regarding any document which they sign. The garnishment does not have to be countersigned by a non-attorney.
4. In response to MC 50 "Garnishment Release": MCBA wholeheartedly supports the revision of this language and furthermore suggests an additional three words so that the language on the release would read "any amounts withheld, by the garnishee on or after _____, shall be returned to the Defendant

and any further withholdings shall be discontinued." MCBA agrees that the current language is confusing. The intent of the release is that it only applies to monies withheld after a specific date. Moreover, it should specifically identify "by the garnishee" so that an unsophisticated judgment debtor does not think that he/she will be refunded money that has been held by the judgment creditor for funds previously received.

5. In response to "New Form, Renewal of Civil Judgment": There is a proposal for an "affidavit regarding enforcement of judgment." The form is on the website. I have reviewed the memorandum from SCAO regarding renewal of judgment, however, that memorandum suggested a judgment can be renewed only in two fashions. One by filing an ex-parte motion and the other by filing a summons and complaint. Therefore, the SCAO believes that the affidavit is inappropriate.

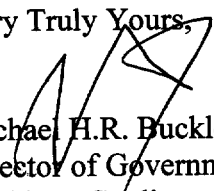
The Michigan Creditors Bar Association recommends a form for an ex-parte motion for renewal of judgment. The Michigan Creditors Bar Association also suggests that an affidavit regarding enforcement of judgment also be approved by SCAO.

There is a third way that judgments can be renewed, namely by any payment on the account voluntary or involuntary. These payments automatically renew a judgment. Therefore, an ex-parte motion or a summons and complaint is not necessarily required. The filing of the affidavit would alert the court and the clerk that the statute of limitations has not run on the judgment.

Attached is a memorandum of law that our office filed in an appeal in the 60th District Court in which the court refused to issue a garnishment claiming that the judgment had expired, notwithstanding the fact that payments, voluntary and/or involuntary, have been received. That court was overruled by the Circuit Court. Attached is the order.

Accordingly, MCBA recommends both an ex-parte motion for renewal and an affidavit regarding enforcement of judgment. The affidavit would not supplement the ex-parte motion. Rather the affidavit would be an independent way to indicate to the court that a judgment had been renewed by payment. The ex-parte motion would be used in those cases where payment may not have been made.

Very Truly Yours,


Michael H.R. Buckles
Director of Government Affairs
Michigan Creditors Bar Association
Mailing address:
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Direct phone: 248-593-7110
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**STATE OF MICHIGAN
IN THE 60 DISTRICT COURT**

Portfolio Recovery Associates, LLC ,

Plaintiff,

vs.

Case No. 97-43443-GC

Douglas Moyer

Defendant(s)/

Michael H.R. Buckles (P24157)
Buckles & Buckles, P.L.C.
Attorneys for Plaintiff
P.O. Box 1150
Birmingham, MI 48012
(248) 647-5050

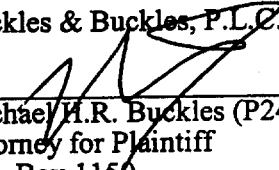
MOTION TO REINSTATE GARNISHMENT

Plaintiff moves to reinstate the garnishment in this matter. The clerk unilaterally released the garnishment claiming that the judgment had expired. For the reasons more fully stated in the attached memorandum of law, the judgment is not expired for two reasons.

First, the ten year statute of limitations for the judgment in this matter was renewed each time the plaintiff received an involuntary payment as a result of a tax return garnishment. Second, the successful tax return garnishments constitute "an action" renewing the judgment pursuant to MCL 600.5809(3) and applicable case law as more fully set forth in the attached memorandum.

THEREFORE, plaintiff requests that the release of garnishment be set aside and a new garnishment be issued so that plaintiff can serve the same on the Michigan Department of Treasury.

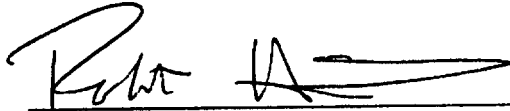
Buckles & Buckles, P.L.C.



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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U.S. Mail, postage prepaid, in envelopes addressed to the parties of record and/or their attorney at their respective addresses disclosed on the pleadings on August 26, 2008. I declare that the statements above are true to the best of my information, knowledge and belief.



Rob Hinman

August 26, 2008

97-00652-0

PLE

This communication is from a debt collector.

**STATE OF MICHIGAN
IN THE 60 DISTRICT COURT**

Portfolio Recovery Associates, LLC ,

Plaintiff,

vs.

Case No. 97-43443-GC

Douglas Moyer

Defendant(s)./

Michael H.R. Buckles (P24157)

Buckles & Buckles, P.L.C.

Attorneys for Plaintiff

P.O. Box 1150

Birmingham, MI 48012

(248) 647-5050

Brief in Support of Motion to Reinstate Garnishment

Facts

1. Plaintiff filed suit on this matter on July 5, 1997.
2. Judgment was entered on September 12, 1997. (Exhibit 1).
3. Defendant has made payments on the account. All of the payments have been involuntary made on the following dates:
 - a. Tax Intercept filed 11/03/2003, Received: 4/13/2004, Amount: \$499.00.
 - b. Tax Intercept filed 11/02/2004, Received: 5/20/2005, Amount: \$314.00.
 - c. Tax Intercept filed 11/02/2005, Received: 5/22/2006, Amount: \$583.00.
 - d. Tax Intercept filed 11/01/2006, Received: 8/17/2007, Amount: \$466.00.
 - e. Tax Intercept filed 3/04/2008, Received: 8/11/2008, Amount: \$593.00.Attached as exhibit 2 is plaintiff's ledger.
4. Verification of the involuntary payments are established by the garnishment disclosures that are attached as exhibits 3a-e.

5. Plaintiff in this matter has filed a writ of garnishment for a tax refund on August 1, 2008.
6. The court released the garnishment in a document signed by a court clerk claiming that "judgment expired". (Exhibit 4).
7. The last payment was on August 17, 2007.

Issue 1: Whether the statute of limitations on this judgment was renewed by involuntary payments made by the debtor pursuant to tax return garnishments (tax intercepts) filed by the judgment creditor/plaintiff.

Plaintiff says YES. The judgment in this matter was renewed each time the plaintiff received the payment on its successful tax return garnishment, regardless of the fact that the payment was involuntary.

Issue 2: Whether successful tax return garnishments filed within the ten year statute of limitations constituted "an action" renewing the judgment pursuant to MCL 600.5809(3).

Plaintiff says Yes. Plaintiff filed five successful tax return garnishments during the ten year statute of limitations. Those successful garnishments constitute "an action" which renewed the judgment pursuant to MCL 600.5809(3).

Law

Rule 1: In Michigan, a partial payment on an obligation acts as an acknowledgment of that obligation, waives the statute of limitations defense and renews the obligation to pay from the date of the payment.

In *Miner v Lorman*, 56 Mich 212, 22 NW 265 (1885), the parties formed a partnership in 1869, which then terminated when the parties formed a corporation in 1874. The parties did not take a full accounting of the partnership at the time of its termination, but did so in December, 1881. At that time defendant owed \$1,095.93 to plaintiff with 8 years interest. Defendant paid down the debt by transferring property and collected rent, but did not payoff the entire balance.

The court held that a partial payment acts as an acknowledgement of a debt owed, and payment will waive the statute of limitations as a suitable defense. The court reasoned,

[I]t is familiar law that [payment] operates as an acknowledgement of the continued existence of the demand, and as a waiver of any right to take advantage, by plea of the statute of limitations, of any such lapse of time as may have occurred previous to the payment being made. The payment is not a contract; it is not in itself even a promise. But it furnishes ground for implying a promise, in renewal from its date, of any right of action which before may have existed." *Id* at 216, 22 NW 266.

Therefore, the rule of Miner is that a partial payment acts as recognition of the original obligation, reaffirming the obligation and renewing the statute of limitation as of the date of partial payment.

Rule 2: Where there is no claim, declaration or circumstance that repels the presumption of the obligation to pay at the time of payment, the rule of Miner applies regardless of whether the payments were voluntary or involuntary.

Involuntary partial payments made that do not include a claim that repels the presumption that the debtor recognizes his obligation renews the statute of limitations from the date of partial payment. In *Neilands v Wright*, 134 Mich 77, 95 NW 997 (1903), a policeman had a judgment against him entered on January 25, 1894. Under a requirement of the police force at the time, policemen were required to pay their debts. The policeman claimed that the payments he made, the last of which was made on December 10, 1900, were involuntary because the penalty for nonpayment of a court ordered judgment was being held in contempt of court.

The court held that whether the payments were voluntary or involuntary was not a factor for the court to consider. The prevailing factor in the running of the statute of

limitations is whether “a payment made upon a claim under such circumstances as to repel the presumption that the debtor thereby recognized his obligation to pay the entire debt.” *Id.* at 78, 95 NW 997-98. Where there is no claim, declaration, or circumstance that repels the presumption of the obligation to pay, the rule of *Miner* applies regardless of whether the payments were voluntary or involuntary. *Id.* at 79, 95 NW 998. Thus, the nature of the partial payment, either made voluntarily or involuntarily, has no bearing on whether the statute of limitations renews from the date of last payment. Both types of payment renew the statute of limitations on the date of last payment.

Rule 3: A payment on a judgment, either voluntary or involuntary, made before the expiration of the ten year period of limitations, renews the statute of limitations from the date of payment.

In *Wayne County Social Services Director v Yates*, 261 Mich App. 152, 681 N.W. 2d 5 (2004), a husband and wife divorced in 1977, leaving no provisions for child support of their two children in the divorce decree. Because the mother was the custodial parent and recipient of Aid to Dependent Children payments, the Social Services Director for Wayne County filed a complaint for child support against Mr. Yates. The judgment required Mr. Yates to pay \$60 a week in child support. Mr. Yates did not pay. Some of Mr. Yates’s wages were successfully withheld in 1990, 1996, 1997, and 1998. The youngest child reached the age of eighteen in 1990. Mr. Yates filed a motion to extinguish the child support arrearage because the period of limitations had expired.

The court held that the wage withholdings in the 1990’s renewed the full child support obligation and extended the period of limitations. *Id.* at 157, 681 NW2d 8. The court reasoned that unless a declaration or statement why the partial payment does not

imply admission to the full obligation accompanies the partial payment, such as accord and satisfaction, the partial payment will be presumed to admit the full obligation and restart the statute of limitations. The court also reasoned that whether the payment is voluntary or involuntary has little bearing on the effect the partial payment has on the statute of limitations. *Id.* at 156, 681 NW2d 8. Thus, partial payments paid before the expiration of the statute of limitations on the original judgment act to restart the running of that period of limitations, regardless of whether the partial payments were voluntary or involuntary.

Rule 4: Successful tax return garnishments resulting in payments that are made within the ten year period of limitation of the judgment constitute “an action” under MCL 600.5809(3) and renew the statute of limitations.

In the unpublished case of *Morehead v Hoffdal*, Michigan Court of Appeals docket number 201019 (1998) (exhibit 5), the court held that successful tax return garnishments within the ten year period of limitations constitute “an action” and renew the statute of limitations from the date of payment. In *Morehead*, the parties were divorced in 1981. The divorce judgment required the former husband to make child support payments until the youngest child reached the age of majority, which occurred in 1985. The former husband was successfully garnished through tax intercepts in 1992 and 1993. He made no other payments to his former wife. When he moved to quash a tax intercept in 1996 for the reason that the ten year statute of limitations had run, the court held that involuntary payments through tax refund intercepts made during the ten-year statute of limitations period constitute “an action” under MCL 600.5809(3). Each successful tax intercept renewed the statute of limitations from the date of payment.

Furthermore, in another case, the Court of Appeals has ruled that the definition of “an action” under MCL 600.5809(3) does not mean a “cause of action.” This was settled in the case of *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 674 NW2d 731 (2003) when the defendant filed an ex parte motion to renew a judgment. However, pursuant to the *Moorehead* case, the action can simply be a successful post judgment remedy to collect the debt, e.g. a tax refund intercept. In the case at bar, plaintiff filed tax intercepts. Those post judgment remedies constituted a successful “action” pursuant to MCL 600.5809(3), *Morehead* and *Van Reken* cases.

Argument

First, the ten year statute of limitations for the judgment in this matter was renewed each time the plaintiff received an involuntary payment as a result of a tax return garnishment. Second, each successful tax return garnishment constituted “an action” renewing the judgment pursuant to MCL 600.5809(3) and applicable case law.


Defendant made partial payments on the judgment through successful tax intercepts. Following *Miner*, any partial payment operates as an acknowledgment of the entire debt owed and renews the statute of limitations from the last date of payment. It does not matter that the tax intercepts resulted in involuntary payments. *Wright* demonstrates that involuntary partial payments have the same effect as voluntary partial payments in that they operate as an acknowledgement of the debt owed. These payments renew the statute of limitations from the last date of payment. *Yates* reinforces the rule that payment on a judgment renews the statute of limitations, regardless of whether or not the payment is voluntary or involuntary.

In addition, because the tax intercepts filed by the judgment creditor were successful, each successful tax intercept constituted "an action" under MCL 600.5809(3) which renewed the statute of limitations from the date the payment was received.

Every time a payment was received by the judgment creditor, it renewed the statute of limitations for an additional ten years. Every time a successful payment was received, it constituted an action that renewed the judgment for an additional ten years. The last payment received was on August 17, 2007. Accordingly, the statute of limitations was renewed for another ten year period, namely the period ending August 17, 2017.

Respectfully Submitted,

Buckles & Buckles, P.L.C.



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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

PORTFOLIO RECOVERY
ASSOCIATED, LLC,

Plaintiff,

Case No. 08 046303 AV
District Court Case No. 97 43443 GC

v.

ORDER

DOUGLAS MOYER

Honorable William C. Marietti

Michael H.R. Buckles (P24157)
Attorney for Plaintiff
17845 W 14 Mile Rd.
P.O. Box 1150
Birmingham, MI 48012

Terry L. Hoeksema (P25182)
Of Counsel for the Plaintiff
2932 East Paris, SE
Grand Rapids, MI 49512
(616) 957-4950

At a session of said Court held in the
Courthouse, Muskegon, Michigan this
2 day of Feb, 2009

PRESENT: HONORABLE WILLIAM C. MARIETTI
CIRCUIT COURT JUDGE

Upon review of the pleadings and Briefs filed in this matter and after oral argument and the Court being fully advised in the premises, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The District Court's ruling denying the Plaintiff's motion to reinstate the garnishment is hereby overruled.
2. The Plaintiff's motion to reinstate the garnishment is granted.
3. This Court further finds that the statute of limitations in this matter is 10 years from the date of the last payment, an involuntary garnishment received by the Plaintiff on August 11, 2008.



Circuit Court Judge